

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK, NEW JERSEY 07101

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U.S. DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK, NJ 07101  
FILED

2019 OCT 23 P 3:20

JOEL E. DURMER: MITCHELL D. :  
YASUK: FRANK J. SANCHEZ: :  
JOHN M. BANDA: CARLTON E. :  
GREEN: BRUCE L. JENNINGS: :  
JAMAR BURNEY: and all others :  
similarly situated, :  
Plaintiffs :

Civil Action No. 19-19259(ES)

Jurisdiction:  
42 U.S.C.A. §1983 et seq.

vs. :

COMPLAINT

MARCUS O. HICKS, COMMISSIONER :  
NJDOC: CAROLE JOHNSON, :  
COMMISSIONER, NJDHS: SHEREFF :  
ELNAHAL, COMMISSIONER, NJDOH :  
GEORGE ROBINSON, ADMINISTRATOR: :  
ADTC: MARC SIM, ASSISTANT :  
SUPERINTENDANT, ADTC: MERRILL :  
MAIN, PHD., STU CLINICAL :  
DIRECTOR: DOREEN STANZIONE, :  
STU DEPUTY CLINICAL DIRECTOR: :  
D. SIMMS, STU RECREATION :  
DIRECTOR: A. HALPER, DHS/DOH :  
EMPLOYEE: C. ARMOUR, DOH/DHS :  
EMPLOYEE: :  
Defendants :

PRELIMINARY STATEMENT

This is an action undertaken by the plaintiffs in which the Plaintiffs seek to have this Court declare unlawful and enjoin certain policies and practices of the defendants, which plaintiffs allege violate their right to safe, non-punitive conditions of commitment, adequate treatment for any named condition, as well as free exercise of religion. This action arises under 42 USCA §§1983 and 1988; the Federal DEclaratory Judgment Act, 28 USCA §§2201 and 2202; the Religious Land Use and Institutionalized Persons Act, 42 USCA §§ 2000bb and 2000cc; and the First, Fourth, Sixth, Seventh, eighth,

Ninth and Fourteenth Amendments to the United States Constitution. Plaintiffs also apply for class status. Class Status should be granted because there are common issues of fact and law that apply across the spectrum since all prospective class members are residents of the STU, and are all affected equally and communally by the actions of the defendants and their policies.

#### JURISDICTION AND VENUE

1. Jurisdiction is conferred upon this Court pursuant to 28 USC§1331 which authorizes original jurisdiction on the district court of all civil actions arising under the Constitution, laws and treaties of the United States. Jurisdiction is also conferred upon this Court pursuant to 28 USCA §1343(a)(4) which grants original jurisdiction to the district court of any action to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights; further, the United States District Court for the District of New Jersey is the judicial district where the events or omissions giving rise to plaintiff's claims occurred, and also is the district in which all the named defendants reside and/or where they may be served with process, and therefore is the proper venue for this action pursuant to 28 USCA §1391(b).

2. No previously dismissed federal complaints as frivolous.

3. Present Place of commitment: Special Treatment Unit  
8 Production Way, PO Box 905  
Avenel, NJ 07001-0905  
732-574-2250

Plaintiffs:

4. a] Joel E. Durmer, #677  
Special Treatment Unit  
Avenel, NJ 07001
- b] Mitchell D. Yasuk, #672  
Special Treatment unit  
Avenel, NJ 07001
- c] Frank J. Sanchez, #387  
Special Treatment Unit  
Avenel, NJ 07001
- d] John M. Banda, #351  
Special Treatment Unit  
Avenel, NJ 07001
- e] Carlton E. Green, #445  
Special Treatment Unit  
Avenel, NJ 07001
- f] Bruce L. Jennins, #277  
Special Treatment Unit  
Avenel, NJ 07001
- g] Jamar Burney, #647  
Special Treatment Unit  
Avenel, NJ 07001

Defendants:

- a] Marcus O. Hicks, Esq.  
Commissioner of Corrections  
State of New Jersey  
PO Box 863  
Trenton, NJ 08625-0863

This defendant is charged with protecting the public, and provides for the custody, care, discipline and training of persons committed to correctional facilities or parole; prepares prisoners for release and reintegration into society. (NJSA 30:1B-1). This defendant has utterly failed to discharge his duties as they relate to the residents of the STU.

- b] Carole Johnson  
Commissioner, Dept. of Human Services  
Trenton, NJ 08625

This defendant is charged with administrating and establishing policy

for governing the State's charitable, medical and relief institutions, noninstitutional facilities and program services. (NJSA 30:1-2.3). This defendant has not followed up on the policies implemented at the STU, nor seen to the training of those individuals charged with the delivery of services to the residents of the STU.

c] Shareef Elnahal, Commissioner  
NJ Dept. of Health  
Trenton, NJ 08625

Oversees and inspects hospitals and health care facilities; administers state and federal financial assistance to hospitals, local health departments and home/community health agencies; conducts programs to detect and immunize from communicable diseases; repository for all state health records including vital statistics; educates health professionals (although licensing is done through Dept. of Law and Public Safety); also studies the delivery of health services, the problems of alcohol and drug abuse, environmental and occupational health issues, and other areas of concern (NJSA 26:1A-37). Therefore, after the merger of the NJ Dept. of Human Services with the NJ Dept. of Health,, this individual is charged with oversight dealing with the Patient's Bill of Rights, as well as the staffing and training to meet the needs of the 400+ residents presently committed to the STU. Policies are put in place without the consideration of those they affect, and now refuses to properly enforce the Patient's Bill of Rights.

d] George Robinson, Administrator  
Adult Diagnostic & Treatment Center  
Avenel, NJ 07001

This defendant is the administrator of the Adult Diagnostic and Treatment Center, which has direct day-to-day oversight of the facility known as the STU. It is primarily staffed by Corrections Officers

who are trained in the care, custody and control of inmates/prisoners as well as making sure that the physical plant is kept up to proper operating standards. His supervision has been less than involved, leaving the day-to-day running to the following defendant.

e] Marc Sim, Asst. Supt.  
Adult Diagnostic & Treatment Center  
Avenel, NJ 07001

As the assistant superintendant in charge of the day-to-day operations of the STU, Marc Sims has been woefully inadequate. Buildings are in a gross state of disrepair; arbitrary decisions are made about visitors subject to the NJ Administrative Code 10A, which is inapplicable in this institution; he disregards facts about certain conditions, and is misleading in others; critical services are withheld from the resident population, especially on the South unit, where the residents who are not on MAP (Modified Access Program) are being ostracized, and are being deprived of the normal activities and services open to all other residents.

f] Merrill Main, PhD.  
Clinical Director, STU  
Avenel, NJ 07001

As the clinical director, Merrill Main PhD. is responsible for each and every decision made regarding treatment and its delivery to those residents committed to the STU. His decisions are capricious, arbitrary and illegal, impacting therapy, the lives of the residents, and have unconstitutionally impacted protected liberty interests for the residents.

g] Doreen Stanzione, PhD.  
Deputy Clinical Director, STU  
Avenel, NJ 07001

As deputy clinical director, Doreen Stanzione is directly responsible

for implementing the policies dictated by Merrill Main, PhD., without doing any evaluation of the policies themselves or how they impact residents at the STU.

h] D. Townsend  
Recreational Director, STU  
Avenel, NJ 07001

As recreation supervisor, Ms. Townsend is directly responsible for the delivery of recreational activities and their direct delivery to the STU residents. In conjunction with Marc Sims, Ms. Townsend has successfully isolated and ostracized the residents of the South unit and created a modern-day therapeutic administrative segregation by refusing to permit the delivery of recreational services to the South unit. This violates plaintiff's Equal Protection rights.

i] A. Halper  
Recreational/Therapeutic Staff (DOH/DHS)  
As an employee of the DOH/DHS, working as a recreational and Therapeutic staff employee, Ms. Halper carries out orders from senior staff that impact resident's lives unnecessarily and keeps them from enjoying the exact same opportunities, rights and privileges that the bulk of the residents enjoy. She improperly decides who receives what level of pay, who is assigned to certain jobs (regardless of training) where she has absolutely no expertise.

j] C. Armour  
DOH/DHS Recreational/therapeutic employee  
STU, Avenel, NJ 07001

As a supervisor, Ms. Armour makes daily decisions regarding the delivery of services and job placements that are arbitrary, capricious, spiteful and unnecessarily hurtful.

5. We have previously sought both informal and formal resolution/relief

from these administrative officials regarding the acts complained of in our statement of reasons/claims. WE have had face-to-face discussions, made official inquiries, filed official grievances and sent certified letters to try and obtain relief. All have been systematically ignored. These attempts are attached for the Court's convenience and viewing.

CASE LAW RELIED UPON

PELL vs. PROCUNIER, 417 US 817, 94 S.Ct. 2800, (June, 1974)

RAMOS v. LAMM, 485 F. Supp. 122; 639 F.2d 559 (10th Cir. 1979)

ESTELL v. GAMBLE, 429 US 97; 97 S.Ct. 285 (Nov. 1976)

TURNER v. SAFLY, 482 US 78; 107 S.Ct. 2254 (June, 1987)

WOJTCZAK v. CUYLER, 480 F.Supp. 1288 (ED-PA, December, 1979)

MOORE & HYSLER v. BROWN, 05-2179 (JCL) 2:07-cv-01212 DMC-MF 3/2008

BELL v. WOLFISH 441 US 520; 99 S.Ct. 1861 (May, 1979)

Plaintiffs cite the above case law in support of their contentions that NJDOC-NJDOH/DHS are using the present condition to justify their claims of "legitimate penological interests". However, that term presupposes that the residents of the STU are here to be punished. The custodial part of any confinement has already been served, therefore there is no legitimate penological interest to be protected. The state agencies charged with the operation of the STU have far exceeded the scope and authority, and only this Court can rule that they contain and restrict themselves to those actions to that which they can legitimately lay claim to before this Court., those which are constitutionally permissible and appropriate for an institution such as the STU.



Table of abbreviations used in the present complaint

ADTC:	Adult Diagnostic & Treatment Center
STU:	Special Treatment Unit
DOC:	N.J. Department of Corrections
DOH:	N.J. Department of Health
DHS:	N.J. Department of Human Services
DURMER:	Plaintiff Joel e. Durmer
Yasuk	Plaintiff Mitchell D. Yasuk
Sanchez:	Plaintiff Frank J. SAnchez
Banda:	Plaintiff John M. Banda
Green:	Plaintiff Carlton E. Green
Jennings:	Plaintiff Bruce L. Jennings
Burney	Plaintiff Jamar Burney
Hicks:	Defendant Marcus O. Hicks, Esq.
Johnson	Defendant Carole Johnson
Elnahal:	Defendant Shereff Elnahal
Robinson:	Defendant George Robinson
Sim:	Defendant Marc Sim
Main:	Defendant Merrill Main
Stanzione:	Defendant Doreen Stanzione
Simms:	Defendant D.Simms
Halper:	Defendant A. Halper
Armour	Defendant C. Armour
"Main"	Housing units of North, South, East & West
"Annex"	Building which houses four dormitories/medical
TR:	Treatment Refuser; someone who is not actively participating in the prescribed therapy program



Statement of Claims:

Plaintiff Joel E. Durmer:

Durmer states that DOC has violated his rights in the following manner; DOC, citing the Patriot Act, has denied Durmer's wife of more than 40 years entrance to the facility for visitation purposes. This is because Durmer's wife's N.J. Driver's License has, as an official address, a P.O. Box on it rather than a street address. This circumstance is due to being "hacked" and having her identity stolen. The N.J. Secretary of State identified Durmer's wife, Carol, as a legal resident of New Jersey, and authorized her use of the post office box as a legal address on her driver's license. She has visited numerous times with that driver's license since 2011, but as soon as Durmer was designated a TR (Treatment Refuser), she was denied entrance and visitation. DOC cited "legitimate security and penological interests" which do not in fact exist. They have further violated Durmer's rights by refusing to allow carbon paper into the institution, which forces Durmer to submit his documents and legal arguments for photocopying at 10¢ per page; further, Durmer is being treated by a physician (Sumalatha Mannava, MD) whom he is suing for a medical tort; further, DOC is being excluded from the practice of his faith because DOC, in cooperation with DOH-DHS, to isolate the South unit, has in effect, deprived him of religious liberty; further, Durmer, a cardiac patient (triple bypass) is being sleep-deprived by the authorized actions of the third shift officers, working from 2200 - 0600, by shining a light in his face at all hours of the night, as well as banging on his door "to see if you're alive". This violates the Geneva conventions, of which the United States

is a signatory power, which guarantees all prisoners and 'detainees' eight (8) hours of uninterrupted rest.

Durmer's rights are being violated by DOH-DHS in the following manner: while Durmer is not committed, meaning committed for treatment, but only for an evaluation, DOH-DHS personnel have designated Durmer as a "Treatment Refuser" because he refuses to give up his rights. At no time has Durmer ever refused to comply with treatment directives except where they refer to the "index offense" or predicate offense. Durmer is presently waiting for scheduling of a motion in Ocean County for a New Trial based on New Evidence and Prosecutorial Misconduct (Brady violations). That motion contains documents from the State of Maine, wherein he is cleared of any wrongdoing whatsoever. Durmer has asked the 'treatment team' and the TPRC the following unanswered question: if he is not a sex offender, why would he take sex offender specific treatment? The SVPA [NJSA §30:4-27.24 et seq.], while being ruled constitutional, is unconstitutional in its application to the residents here. It is a primitive, poorly designed, resembling, at best, a simplistic program of behavior modification, not Cognitive Behavioral Therapy, as they claim. Durmer has an advanced degree in psychology (educational), but underwent CBT during the 1980s for PTSD, a direct result of intense combat in Southeast Asia, as well as molestation at an early age, and active alcoholism from 1968 through November, 1975. Durmer recognizes CBT as well due to his Virginia Certification as an Alcohol Counselor. Further, DOH-DHS has excluded Durmer from any participation in holiday celebrations because he is a TR; further, in conjunction with DOC, DOH-DHS has helped to create a civilian Administrative Segregation, in

an attempt to force residents to disclose that which is protected by the U.S. Constitution. In Durmer's case, the DOH-DHS is trying to overcome the admonitions of the N.J. Appellate Division, the PJCrP from Ocean County, and three (3) lawyers who have advised him to maintain his silence. Durmer has submitted authenticated documents from another state which are clearly exculpatory; further, in cooperation and combination with DOC, DOH-DHS have conspired together to reduce the resident's payroll by as much as eighty (80) percent. They "suggest" that before a resident may be discharged, he should have a minimum of between eight and ten thousand dollars saved up [\$8000 - \$10000]. This can be found on page 19, of the Resident Guide to the STU, May 2, 2019 - 3 months after the decision to reduce wages. By this action, Main and DOH-DHS has unconstitutionally impacted a constitutionally protected liberty interest. Further, DOC has impacted durmer's health by continuing to serve "prison" food, which is poor in nutrition, and has caused not only Durmer, but also Plaintiffs Jennings and Sanchez to develop Adult-onset Type Two diabetes. Before his incarceration, Durmer had low blood sugar, low blood pressure and low pulse due to his activities in the armed forces, which necessitated a great deal of running long distances.

Plaintiff Mitchell D. yasuk

Yasuk states that DOC and DOH-DHS have violated his rights as the following states: DOC employees physicians obtained through their contract employee, Rutgers University Health Care. The doctor on duty here since July of 2015 has been Sumalatha Mannava, MD, who

has refused to prescribe Motrin (ibuprofen), a non-narcotic pain reliever, advising Yasuk to take Tylenol instead. AS noted in the medical records of Yasuk, he cannot take Tylenol because it causes him to have kidney stones. Mannava further states that Motrin is expensive and uncalled for. Further, the medications I keep with me, called KOPs, are rarely here when one prescription expires. In March of 2019, Yasuk was rushed to Robert Wood Johnson Hospital due to a heart abnormality, and DOC medical never sent Yasuk's records to the care provider. This caused them to not know what to give me because they couldn't be asked to take the word of a layman. From June 18, 2019 through September 1, 2019, I was not permitted to use my lymphadema pump and compressor boots I was supposed to use, but instead the medical people used una-boots for the swelling in Yasuk's legs. Yasuk is exceptionally large (6" tall, 350 lbs.) yet DOC insists on handcuffing and shackling Yasuk, who cannot walk and is wheelchair bound. He is a civilian, not a prisoner, yet they insist on putting him in a transportation vehicle that has no seat belts and is not designed to accomodate Yasuk. Only recently has Yasuk been transported in a "wheelchair van" rather than the "dog vans" they usually believe, sometimes having state prisoners in them as well.

AS Durmer has been placed on TR status for not speaking about the index offense that brought him here to the STU, Yasuk has exactly the same set of circumstances, from the same county. Presently, Yasuk has pending a petition for WRit of habeas Corpus, and the case number is 3:18-cv-10165-PGS. Yasuk is only following the edicts of the RESident Guide published on May 2, 2019. Yet Yasuk is made a TR for asserting his rights, as if to punish him.

Plaintiff Frank J. Sanchez

SANchez states that DOC, through Rutgers University Health Care, has violated his rights as follows: In 2007, Sanchez was told by doctors at St. Frances Medical Center, Trenton, that he needed surgery on his right shoulder to repair major damage inside it, but the STU rerfused to send him for this operation, citing expense for someone of SANchez' age (at the time, aged 58). On August 23, 2017, I was assisted by attorney Charles H. Landesman, of Kearny, NJ, in obtaining my sought-after medical records. I intend them to be used in two ways: one, to help me show the STU medical department that I still needed the surgery; and two, to use in court, to prove I couldn't have committed the crimes I was accused of. When I tried to use them in court, I was removed from court.

Sanchez further states that DOC, through its contract employee Rutgers University Behavioral Health Care violated his rights be refusing to follow their own stated ruled regarding release from the STU. Sanchez was ordered not to speak in court or he would be removed. Somehow, DOH-DHS managed to confuse my case with that of John Sanchez, #587, and our records are jumbled together, which is being used against me. In 2018, Sanchez was told to take what is known as a "stipulated polygraph" in order to secure his release. He did so, passed, but is still here because DOH-DHS refuses to honor the agreement. On May 18, 2018, a state psychiatrist, Dr. Foley, testified before the commitment judge that he could think "of no reason" SANchez should be kept at the STU and warehoused here. The judge commented that the STU and its program had completely failed Sanchez in every respect.

## Plaintiff John M. Banda

John M. Banda states that DOC, through their contract employee, Rutgers University Health Care and the physician hired to treat residents, has refused to treat Banda's medical problems in a consistent and proper manner. This has compromised Banda's health, including weight gain. He had been able to order Lipozene, on which he lost more than 100 pounds, but is now disallowed without explanation. Like the other plaintiffs, Banda has been forced to live in prison-like conditions that are so bad the civilian staff and DOC staff are advised to drink bottled water since the water here is unpotable. Residents are not offered that selection.

Further, Banda's constitutional rights are being violated by DOH-DHS in the following manner: Banda has not been convicted of a sex offense, yet he is still being held in civil commitment, which amounts to false imprisonment, thus being classified as a TR. If he did not commit a sex offense, why is he here and why would he take sex offender therapy if he hasn't committed a sex offense.

## Plaintiff Carlton E. Green

Green states that OH-DHS are violating his rights as follows: Green is being forced to attend process groups as a sex offender when the predicate/index offense was vacated as of August 14, 2014, more than 5 years ago. In turn, he was put on the South unit as a TR, even though the reason (sex offense) for civil commitment no longer exists, and in no way does Green fit the criteria for civil commitment without the index offense. The N.J. Attorney General refuses to answer the petitions filed on Green's behalf, asking for an answer: why is still being held in civil commitment when the offense no longer exists? Commitment counsel has been entirely ineffective from the beginning.

## Plaintiff Bruce L. Jennings

Jennings states that DOC has violated his rights in the following ways: They have caused Jennings to become an Adult Onset Type 2 diabetic due to poor diet; further, through their contract employee Rutgers University Health Care, Jennings has suffered a two-year delay in surgery to correct cataracts, now in both eyes. Numerous sick call slips have gone in, but no answer as to when it might be done, even if it causes blindness in a 70 year-old man. Further, the poor diet served at the STU is mainly starch (potatoes, bread, rice, etc.) combined with fruits in heavy syrup, which can only lead to enormous weight gain, coronary artery disease, and other related ailments which Jennings now suffers from.

Jennings further states that DOH-DHS has violated his rights in the following manner: the TPRC relies on outdated, false, and misleading information on which they base an alleged treatment plan; their evaluations are meticulously and oppressively prepared in that little or no positive feedback is given, and is based on subjective data; they infer that Jennings must in some way fabricate events that align with their idea of what occurred, which means forfeiting one right to "earn" another. DOH-DHS in collaboration with DOC have refused to let Jennings, or any other plaintiff to participate in any holiday celebrations/festivities, instead, hand-picking those they want to attend. This is a manner of discrete punishment they believe will be ignored and/or accepted.



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families and patients affected by these policy changes is unconstitutional.

Further, Burney's Constitutional rights to avoid illegal detention have been violated under NJSA §30:4-27.24 et seq. To be returned or brought to the STU, you must be examined by two independent doctors and the following must be found: 1] that the person has committed what is known as the index offense under the act; 2] that the person suffers from a mental disease or disorder; and 3] that the person is highly likely to sexually reoffend, or in simpler terms, commit a new sex offense if released. Burney was a juvenile when convicted of a sex offense; he was released on parole. While on parole, Burney was arrested for a weapons offense. At the conclusion of that term, instead of being released back to parole, Burney was brought to the STU, and has been here ever since. No new sex offense, yet he is in custody as a SVP without any supporting documentation.

#### BROADER RANGE VIOLATIONS THAT AFFECT EVERY RESIDENT

Broader range claims regarding the extended class of unnamed plaintiffs regarding issues germane to the issues of the named plaintiffs and related to the present and continuing violations of their U.S. Constitutional Rights, as previously enumerated.

1] The salary structure changes unconstitutionally impact a protected constitutional liberty interest. As previously stated, on page 19 of the STU Resident Guide published by DOH-DHS, residents are told to save up six to eight months of expense money for release, and a modest amount of \$8000 to \$10000 is "suggested". At the same time, residents have had their salaries cut by 80%. How do they save that much cash when they're not making it?

Before the salary changes, the following was in effect across the board:

Phase 1:	1 hour of work per day;
Phase 2:	2 hours of work per day
Phase 3:	3 hours of work per day
Phase 4:	4 hours of work per day
Phase 5:	5 hours of work per day

Now, the pay scale has been downsized by 80%. Phase 1 gets one work hour per week; phase 2 gets 2 hours per week; phase 3 gets 3 hours; phase 4 gets 4 hours, and phase 5 gets 5 hours. Phase one makes \$40 per month; phase 2 makes \$80 per month; phase 3 makes \$120 per month; phase 4 makes \$160 per month, and phase 5 makes \$200 per month. This leaves residents qualified to go home unable to do so. They are then discouraged from seeking help from the Special Response Units of each county's welfare board.

2] Regardless of the state's position that the Seventh Amendment does not apply to civil committees or detainees, the state cannot simply ignore/obviate the United States Constitution. Many have asked for a jury trial, but none have been granted.

3] The entire complement of residents on the South unit have been isolated and ostracized, and have had their human dignity stripped from them, sometimes by residents who are predatory and look for those to exploit. They are prevented from participating in any events that the Annex, North, East and West unit participate in routinely. All holiday celebrations have been excluded. In this event, the daily enforcement of the SVPA is unconstitutional in its application and implementation. They - DOC/DOH-DHS - have turned the South unit

into an Administrative Segregation Unit. We are told to consult the STU Resident Guide, produced by DOH-DHS, or the STU REsident Guide put out by DOC; however, DOC has never put out a resident guide, making up rules daily to suit their needs. An especially good example of this is the institutional mail room, where residents' mail is received. They tell us what colors we may wear, how many of each we can have, and what art supplies, for example, of what we may order. They even refuse to deal with UPS, or other carriers, for returned merchandise, making residents pay first class postage rates, which are exorbitant over 3 ounces. There have been instances where someone, for spite, mails contraband of some sort (tobacco, drugs, alcohol, a cell phone, etc.) to a resident, who is then immediately locked up on TCC status, not knowing why. They are later told that contraband had been found in his package, but he never had constructive receipt of it, and gets locked up anyway for several months. DOC passed, without publication or comment to and by the general public and those directly affected, a new regulatory part of NJAC 10A which allows them to implement any part of NJAC 10A in relation to residents.

4] Religious wxclusions under DOC/DOH-DHS mean that residents are forced to choose the type of religious activity or worship that they decide to provide, whether or not it is your form of personal worship. Under the RELigious Freedom and Restoration Act, 42 USCA §2000bb, it is a gross violation of the First Amendment to deny a civilian the opportunity to practice their own faith, as their faith prescribes it is a violation of the very first amendment to our Constitution, known as the Bill of Rights. No law, statute, policy or code may ever take the place of the First Amendment. It is inexcusable.

5] Notwithstanding the assertions of the Clinical Director, Main, the "therapy" offered at the STU is not based on Cognitive Behavioral Therapy (CBT), but rather a primitive and poorly desgined/implemented Behavior Modification program. Residents cannot even object to what is being offered as therapy because the INTERAGENCY OVERSIGHT BOARD (IOB) is an illusion. Residents have no representation or input on it or to it, and no comments are sought by the administrations beforebefore they implement their decisions. The resident welfare account isn't used for the resident's benefit. Resident-owned appliances need to be replaced, but there's "no money" for that.

6] By using prison food, which are, at best, poorly designed nutritionally, DOC has created its own subset of Type II Adult Onset Diabetics. Further, the water is not potable, medical follow-ups are rare, there are no emergency lights on the wings, and there are no emergency defibrilators on any wing in case of a cardiac emergency.

7] Needed repairs to the physical plant are sporadic at best, leaving residents with cold water during the winter and little heat. Because the North, South, East, WEst and Annex units are sealed - read no windows that open - the air conditioning is a must, but it often non-functional, as is the heat.

8] The DOC uses what are euphimistically called "dog vans" to transport residents to any outside appointments (court, medical, etc.). There are no seat belts; elderly patients are forced to climb into the van which many cannot do; the space allocated for each resident is minimal at best, and there is barely room to breathe. If those residents cannot climb into or fit in the van, they are forced to miss critical medical appointments.

9] The DOC routinely "locks down" the entire facility should there be a medical emergency or disturbance on another unit, regardless of how major or minor. They have locked down the entire STU when a "code" is called at ADTC or East Jersey State Prison. They are swift to call a lock-down, but extremely slow to lift it, making the residents wait another hour - hour and a half. Sometimes residents are left locked in for hours, while corrections officers do paperwork.

10] The DOC, citing "legitimate penological interests" and their unconstitutional application of NJAC §10A on the residents, engage in daily sleep deprivation during the 3rd shift (2200 - 0600) by shining their flashlights into resident's cells, in their faces to "check to see if you're alive". They also knock/kick and/or bang on the doors to wake residents up. The Geneva Conventions expressly forbid this.

RELIEF SOUGHT:

Plaintiffs respectfully request both declaratory and injunctive in the following manner:

- a) An immediate temporary restraining order prohibiting the continued new salary structure, as evidenced by the attached memo;
- b) A permanent injunction permitting residents to attend the religious services of their choice, offered throughout the institution;
- c) An immediate TRO, enjoining DOC/DOH-DHS from prohibiting them from keeping residents who are TR status from attending any celebratory events/activities;
- d) an immediate order directing the defendants to permit Durmer's

wife to visit RESident Durmer with her present, acceptable state-issued N.J. DRIVER's License.

e) an immediate injunction directing the defendants to rectify the unconstitutional living conditions presently occurring at the STU.

f) that this Court issue a declaration/finding of ongoing unconstitutional living conditions at the STU;

g) that this Court direct the defendants supply the Plaintiffs with a full, complete documentary accounting of the Resident Welfare Fund, itemized, for their review and comment;

h) that this court issue a TRO, enjoining defendants from serving substandard and inadequate food;

i) that this Court order that at least 1 resident from each housing unit be elected by the residents from each wing, to serve on and report back from Interagency Oversight Board meetings, which should be held on the STU grounds and may be attended by those elected residents.

j) that this Court review all aspects of the ALLEGED THERAPY OFFERED AT THE STU, and have a report issued by an independent authority for its review and any necessary changes;

k) that the Court appoint a Special Master and a requisite number of professionals from the therapeutic community not involved in any way with the delivery of services in the STU, and to see to the actual implementation of any changes that need to be done;

l) That the Court rule this action be a class action, and that the plaintiffs be permitted to file for pro bono counsel representation;

m) that this Court order the defendants to pay plaintiff's costs of this action, along with reasonable attorney's fees under 42 USCA §1983 28 USCA §1915d;

n) for such other relief as may be just and proper in the eyes of the Court.



## Plaintiff Jamar Burney

Burney states that, in cooperation/collusion with DOH-DHS, DOC removed Burney from his cell on the South unit, #311, along with other residents identified as Amir Yancy and Tymar Murray for allegedly throwing a substance, never identified, at a DOC officer on the wing. Burney was locked into his cell until September 5, 2019, when Sgt. Stapp and Sgt. Orange moved Burney, Yancy and Murray to separate units. Burney was placed on the East unit, cell 103, and put on Temporary Close Custody, (TCC). The MAP (modified access program) placement is dated 9/4/2019 and signed by C. Klos, Program Coordinator and Dr. R. Neiman, PsyD. One day later, on September 5, 2019, Burney was transferred from TCC to Wing Map. On September 6, 2019, Burney received a notice from Marc Sim, Assistant Superintendant at ADTC, that under NJAC §10A:35-2.3, Burney's rights to certain actions would be denied. On 9/13/19, that denial was confirmed in writing by Marc Sim, under the aforesaid NJAC §10A:35-2.3. The necessary documentation is attached for the Court's convenience. Burney further states that the restrictions and denial of his rights are illegal and unconstitutional. DOC has cited "legitimate penological concerns" when Burney is not a prisoner nor an inmate, making the application of the Administrative Code for the DOC to be illegal. Burney should have been released from TCC within seventy-two (72) hours, which did not happen. On 9/7/19, Burney was denied the opportunity, per the STU guide, to take a shower. The DOC and DOH-DHS employees violated the rights of Burney consistently and repeatedly enforcing the NJAC, §10A:35-2.3, which is meant solely for use with state prisoners/inmates housed in a state prison or a correctional facility. The passage of NJAC 10A:35-2.3 and its attendant amendments, without the opportunity to comment by those affected



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Plaintiffs reserve the right to amend this complaint as directed by the Court at any time during the proceedings; further, that counsel when appointed shall also enjoy the right to file an amended complaint should that become necessary. Plaintiffs attach copies of memos and letters with which to back up their complaints.

Joel E. Durmer 10/7/19  
JOEL E. DURMER DATE

Mitchell D. Yasuk 10/7/19  
MITCHELL D. YASUK DATE

Frank J. Sanchez 10-7-19  
FRANK J. SANCHEZ DATE

John M. Banda 10-7-19  
JOHN M. BANDA DATE

Carlton E. Green 10/7/19  
CARLTON E. GREEN DATE

Bruce L. Jennings 10/7/19  
BRUCE L. JENNINGS DATE

Jamar Burney  
JAMAR BURNLEY DATE